FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

Chris Gober, Esq.
The Gober Group
P.O. Box 341016
Austin, TX 78734
cg@gobergroup.com

AUG 22 2018

RE: MURs 7001, 7002, 7003, 7009, 7455
Ted Cruz for Senate
and Bradley S. Knippa in his
official capacity as treasurer

Dear Mr. Gober:

The Federal Election Commission (the "Commission") notified your clients, Ted Cruz for Senate and Bradley S. Knippa in his official capacity as treasurer, of four separate complaints and a RAD Referral (MURs 7001, 7002, 7003, 7009 and RAD Referral 16L-09) on January 22, 2016, February 1, 4, and 16, 2016, and June 7, 2016, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). Your clients were provided with copies of the complaints and the Referral on those dates.

After reviewing the allegations contained in the complaints and the referral, your clients' response, and publicly available information, the Commission on July 31, 2018, found reason to believe that your clients violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4) in connection with misreported loans totaling $1,064,000. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information. In addition, the Commission considered MUR 7002 but was equally divided on whether to find reason to believe your clients violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as they are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1604 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/respondent.guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.[1]

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[1] The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

We look forward to your response.

On behalf of the Commission,

Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Senator Rafael Edward "Ted" Cruz
Ted Cruz for Senate
and Bradley S. Knippa
in his official capacity as treasurer

MURs: 7001, 7002, 7003, 7009 and 7455

I. INTRODUCTION

MURs 7001, 7002, 7003 and 7009 involve allegations that Senator Rafael Edward "Ted" Cruz and Ted Cruz for Senate and Bradley Knippa in his official capacity as treasurer (the "Committee"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by misreporting that loans Cruz made to his 2012 Senate campaign were funded with Cruz's "personal funds," rather than a line of credit with Citibank and a margin loan from a Goldman Sachs brokerage account that he owned jointly with his wife. In MUR 7003, the Complaint alleges that the violations were knowing and willful. In RAD Referral 16L-09, the Reports Analysis Division ("RAD") also referred the Committee to the Office of General Counsel ("OGC") for failing to properly report those loans.[1]

The Committee and Senator Cruz ("Cruz Respondents") admit that Senator Cruz funded loans to the Committee with a line of credit from Citibank and a margin loan from a Goldman Sachs brokerage account. The Cruz Respondents also admit that the Committee failed to disclose those loan sources on the reports the Committee filed with the Commission.[2] The Cruz Respondents nevertheless argue that the Commission should dismiss the violations because the

[1] *See* Memorandum from Patricia C. Orrock, Chief Compliance Officer, FEC, to Daniel A. Petalas, Acting General Counsel, FEC (June 2, 2016).

[2] Resp. of Cruz Respondents to MURs 7001, 7002, and 7003 (Apr. 4, 2016) ("Resp. of Cruz Respondents") at 1. The Cruz Respondents filed a single response to MURs 7001, 7002, and 7003 and asked the Commission to consider that response as their response to MUR 7009, as well as their response to the RAD Referral. E-mail from Chris Gober, counsel for the Cruz Respondents, to Jeff S. Jordan, Complaints Examination and Legal Administration ("CELA"), FEC (May 18, 2016, 12:51 EST); e-mail from Chris Gober to CELA, FEC (Dec. 20, 2016, 11:49 EST).

overall reporting of the loans in Senator Cruz's 2012 Senate Financial Disclosure Report and in a Miscellaneous Text Document (Form 99) filed with the Commission in 2016, was substantially correct.[3]

The available information shows that the Committee inaccurately reported that the source of candidate loans totaling $1,064,000 was Senator Cruz's personal funds, and that it failed to report required information about the true underlying sources of the loans. Therefore, the Commission finds reason to believe that Ted Cruz for Senate violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4). The Commission also finds no reason to believe that Senator Cruz individually violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4).

II. FACTS

In 2012, Senator Ted Cruz was a U.S. Senate candidate in Texas and Ted Cruz for Senate was his authorized campaign committee. During the 2012 Senate campaign, the Committee's disclosure reports showed that Cruz made loans to the Committee totaling $1.43 million from "personal funds."[4] Most of the loans were provided shortly before the primary election on May 29, 2012, and the primary runoff election on July 31, 2012. In a 2013 interview with the *New York Times*, Senator Cruz reportedly stated that he and his wife, Heidi Cruz, a managing director at Goldman Sachs, agreed to "liquidate" their "entire net worth" to free up the funds necessary for the campaign.[5]

3. Resp. of Cruz Respondents at 3.

4 Ted Cruz for Senate 2011 April Quarterly Report at 229, 263 (Apr. 15, 2011); 2012 July Quarterly Report at 1,069, 1,196-97 (July 15, 2012); 2012 October Quarterly Report at 1,677, 872-71 (Oct. 15, 2012).

5 *See* Ashley Parker, *A Wife Committed to Cruz's Ideals, but a Study in Contrasts to Him*, N.Y. TIMES, Oct. 23, 2013 (attached to MUR 7003 Compl.).

Senator Cruz filed his United States Senate Financial Disclosure Reports for 2012 ("2012 Senate Report") on May 15, 2013.[6] The 2012 Senate Report includes two loans that Senator Cruz took out in 2012: a "line of credit" from Citibank and a "margin loan" from Goldman Sachs.[7] Each loan is listed in the $250,000 to $500,000 range,[8] with an interest rate of "prime floating" for the Citibank loan and "3% floating" for the margin loan from Goldman Sachs.[9]

On January 13, 2016 the *New York Times* reported that the Goldman Sachs margin loan and the Citibank line of credit, which both appear on the 2012 Senate Report but not on any FEC disclosure reports, were the underlying sources of his candidate loans. On January 14, 2016 the Committee filed a Miscellaneous Text Document (Form 99) with the Commission stating that the margin loan had been "inadvertently omitted" from the relevant 2012 FEC disclosure reports.[10] The Complaints allege that the Goldman Sachs margin loan, which appears on the 2012 Senate Report but not on the Committee's FEC disclosure reports, was the underlying source of Cruz's candidate loans.[11] The Form 99 also provided the following information on the

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6 *See* United States Financial Disclosure Report for Annual and Termination Filers for 2012. https://efdsearch.senate.gov/search/view/paper/12EFF92A-4EA8-44ED-AD2E-A32202BE5771/.

7 Senator Cruz initially disclosed the 2012 loans on his 2011 Senate Financial Disclosure Report, which was filed on July 12, 2012, and reflects that he incurred the loans in 2012. *See* United States Financial Disclosure Report for New Employee and Candidate Reports for 2011. https://efdsearch.senate.gov/search/view/paper/7DA1762C-66E3-4CE2-8E6E-623FE52D7809/.

8 *See* United States Financial Disclosure Report for Annual and Termination Filers for 2012. https://efdsearch.senate.gov/search/view/paper/12EFF92A-4EA8-44ED-AD2E-A32202BE5771/.

9 *See* Senate Report for 2012 at 8. An amendment to the 2012 report added "on demand" under the Term of loan for each of the loans. *See* https://efdsearch.senate.gov/search/view/paper/929B15B0-D2E8-4B91-95CC-EF4DC76E9AF8/.

10 Ted Cruz for Senate, Misc. Rpt. to FEC (Letter from Bradley Knippa, Treasurer, to RAD) (Jan. 14, 2016).

11 *See* Mike McIntire, *Ted Cruz Didn't Report Goldman Sachs Loan in a Senate Race*, N.Y. TIMES, Jan. 13, 2016, at 3 (attached to MUR 7001 Compl. and MUR 7009 Compl. and cited by MUR 7002 Compl. ¶ 7 n.5), Mike McIntire, *Ted Cruz Failed to Report a Second Campaign Loan in 2012*, N.Y. TIMES, Jan. 15, 2016 (attached to MUR 7003 Compl. and cited by MUR 7002 Compl. ¶ 10 n.9). The 2012 Senate Report does not reflect that assets were liquidated.

loans: "Goldman Sachs Margin Loan, Incurred 2012, 3% Floating Interest Rate; Citibank Line of Credit, Incurred in 2012, Prime plus floating Interest Rate."[12]

Following receipt of the Form 99, RAD spoke to the Committee's treasurer, assistant treasurer, or counsel on multiple occasions, instructed them on reporting requirements for loans funded by a financial institution, and urged them to amend the Committee's disclosure reports to correctly disclose the required information for each loan on Schedules C (Loans) and C-1 (Loans and Lines of Credit from Lending Institutions).[13] The Committee initially agreed to file the amendments, requesting additional time to gather the documentation, but then told RAD that it was hesitant to do so given that complaints had been filed and an enforcement process initiated.[14] RAD instructed the Committee that it should still file amendments to the reports in which the loans were disclosed and sent the Committee Requests for Additional Information for the 2012 July Quarterly and 2012 October Quarterly Reports, which covered the periods when the loans were incurred.[15] The RFAIs requested that the Committee amend its reports to provide correct loan information and submit the appropriate supporting schedules.[16] Though RAD only sent RFAIs on these two reports, it advised the committee to amend all reports in which the loans were disclosed.[17]

[12] *Id.*

[13] Referral at 2-3.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] Senator Cruz's amended 2012 Senate Report notes that both the Citibank Line of Credit and Goldman Sachs Margin Loan were paid off in 2012.

In response to the RFAIs, the Committee filed another Form 99 stating that it had "proactively provided additional information."[18] On May 4, 2016, RAD advised the Committee that its response to the RFAIs was inadequate and the matter would be referred for further review.[19] The Committee replied that it would not be filing any amendments at that time and has not done so to date.[20]

The Commission also conducted an audit of the Committee's 2012 election cycle activity, and the Commission issued the Final Audit Report ("FAR") on June 22, 2017.[21] The Commission approved a finding that the Committee "failed to properly disclose $1,064,000 in candidate loans that originated with commercial lenders and failed to file the correct schedules C and C-1."[22] The FAR determined that of the $1.43 million in loans that the Committee reported as having come from Senator Cruz's personal funds, he actually borrowed $800,000 from three margin loans with a floating interest rate of 3% secured by a Goldman Sachs brokerage account he jointly held with his wife, Heidi Cruz[23] ($400,000 on 5/18/12; $250,000 on 7/23/12; and $150,000 on 8/7/12) and $264,000 (on 5/22/12) from a Citibank line of credit with a floating interest rate that enabled him to draw cash advances against a limit of $275,000.[24] Unlike the

[18] *Id.* at 3; Ted Cruz for Senate, Misc. Rpt. To FEC (Letter from Bradley Knippa, Treasurer, to RAD) (Mar. 8, 2016).

[19] Referral at 3.

[20] *Id.* at 4; Resp. of Cruz Respondents at 2.

[21] Final Audit Report of the Commission on Ted Cruz for Senate (June 22, 2017).

[22] *Id.* at 3

[23] Senate Rpt. at 8. A margin loan is a financial instrument that allows account holders to borrow from a brokerage firm against the value of assets in their portfolio.

[24] FAR at 8. The FAR found that $366,000 in loans from Senator Cruz to the Committee were from Cruz's personal funds.

Goldman Sachs margin loans, no person other than the candidate himself was liable for the Citibank line of credit.[25] The documentation available from the Cruzes' Goldman Sachs account indicates that the account was opened on January 17, 2006, as an account held by Senator Cruz and his wife as Joint Tenants with Rights of Survivorship. The Customer Agreement for the account states that ownership "will be held in the manner indicated in the title of the account." The available account documentation does not indicate each account holder's ownership interest in the account.

III. LEGAL ANALYSIS

A. Alleged Failure to Disclose Required Information about Candidate Loans

The candidate's principal campaign committee must report all loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate.[26] The disclosure report must identify the person who makes a loan to the committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loans.[27] Commission regulations provide that a committee must disclose information about loans from the candidate to the campaign on Schedules C and C-1.[28] If the candidate finances a loan to the campaign with an underlying loan or line of credit, section 104.3(d)(4) of the Commission's regulations requires the committee to disclose on Schedule C-1, among other things: (1) date,

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[25] Citibank, N.A., Revolving Credit/Time Note, Variable Rate (Individuals/Lawyers) at 1, dated May 11, 2012 (signed by Rafael E. Cruz) (providing that the rate of interest shall be the highest of: (1) Citibank's base rate; (2) the Federal Funds Rate plus 2.0%; or (3) the LIBOR rate plus 2.0%). Cruz's 2012 Senate Disclosure stated only that the line of credit had a "prime – floating" interest rate. Senate Report at 8.

[26] 11 C.F.R. § 100.83(e).

[27] *See* 52 U.S.C. § 30104(b)(3)(E). 11 C.F.R. § 104.3(a)(4)(iv).

[28] 11 C.F.R. § 104.3(d).

amount, and interest rate of the loan or line of credit; (2) name and address of the lending institution; and (3) types and value of collateral or other sources of repayment that secured the loan.[29]

Although Senator Cruz used funds borrowed from Citibank and Goldman Sachs to make loans totaling $1,064,000 to his 2012 Senate campaign, the Committee inaccurately reported on Schedule C that he made the loans to the Committee with his "personal funds," and failed to file a Schedule C-1 to properly disclose the details of the margin loan and line of credit. Thus, the Committee did not comply with the reporting requirements of the Act or the Commission's regulations.

The Cruz Respondents admit that the Committee failed to provide the required information regarding the loans and concede that they have yet to amend their reports.[30] They argue, however, that the matter should be dismissed because the public record has been corrected as a result of the information disclosed in the 2012 Senate Report filed in May 2013, and in the Form 99 filed in January 2016.[31] Respondents specifically cite to MUR 5421 (John Kerry for President) and argue that their reporting meets the "substantially correct" standard set forth in that matter.[32]

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29 *Id.* § 104.3(d)(4).

30 As mentioned above, Respondents explain that the Committee refrained from submitting amendments because "the complaints [have] already been filed and [given] the confidentiality of the enforcement process." Resp. of Cruz Respondents at 2.

31 *See id.*

32 *Id.*; *see also* Second General Counsel's Rpt. at 9, MUR 5421 (John Kerry for President) (concluding that the reporting of the loan in question was substantially correct because the reporting of the loan was "accurate in most respects"). Respondents also cite MUR 6386 (Steve Fincher for Congress) for the proposition that a civil penalty is unwarranted for "this type of reporting error" for a legal loan with subsequent clarification. Resp. at 3. But, this matter is distinguishable from MUR 6386, where the Commission could not agree as to whether it should impose a civil penalty after the committee *had* amended its report to disclose the required loan information. *See* First General Counsel's Report at 6, MUR 6386; Certification, MUR 6386 (June 4, 2011). *See also* MUR 5198 (Cantwell) (no civil penalty where Committee amended reports prior to initiation of matter).

In MUR 5421, the Commission approved a recommendation to dismiss the committee's inaccurate reporting of a series of loans the candidate made to his principal campaign committee where it inaccurately reported the date on which the candidate accessed the loan instead of the date he incurred one of the loans, and inaccurately reported the total fair market value of the collateral for the loan rather than simply the candidate's share of the property.[33] The General Counsel's Report recommended, and the Commission approved, no further action on the inaccurate reporting because the reporting was substantially correct in that its "overall reporting of the loans otherwise accurately disclosed the precise flow of money" from the bank to the campaign.[34]

In this matter, unlike MUR 5421, the overall reporting of the loans was not substantially correct. The Committee reported on a Schedule C that the source of the loans was the candidate's "personal funds" when the funds were actually derived from Citibank and Goldman Sachs. Although Cruz reported the existence of the loans on his 2012 Senate Report filed in May 2013, the report does not include all the details about the terms of the loans, nor does it disclose that Cruz used those loans to finance his campaign.[35] Thus, it was not until 2016 that the Committee first linked the Citibank and Goldman Sachs loans to Cruz's campaign. Further, the Committee has not amended any of the relevant FEC disclosure reports or filed a Schedule C-1 for the loans, and the Form 99 lacks some of the information required to be disclosed on

[33] Second General Counsel's Rpt. at 9, 10, 11, MUR 5421 (John Kerry for President). The loans were comprised of smaller loans the candidate obtained from draws on personal lines of credit, totaling $1.1 million, and a larger loan from Mellon Trust, worth $6.4 million.

[34] *Id.* at 11; Certification, MUR 5421 (Dec. 12, 2005).

[35] The 2012 Senate Report includes the following information: (1) name of the lending institution; (2) year the loan was incurred; (3) approximate amount of the loan within a very broad range; (4) interest rate; and (5) term of loan.

Schedule C-1, including: (1) the dates and amounts of the loans; and (2) the types and value of collateral or other sources of repayment that secured the loan.[36]

Therefore, the Commission finds reason to believe that Ted Cruz for Senate violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4) by failing to disclose accurate information about $1,064,000 in candidate loans in its initial filings for the loans on the 2012 July and October Quarterly Reports and in subsequent reports detailing the loans. Further, because the complaints did not articulate any factual or legal basis for finding Senator Cruz personally liable for the reporting violation, and the Commission sees no basis under the facts of this case to hold the candidate individually responsible for filing accurate and complete disclosure reports, the Commission finds no reason to believe that Senator Cruz violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4).[37]

The Commission does not find that the Committee's reporting violations are knowing and willful as alleged by the Complaint in MUR 7003. That Complaint does not allege sufficient facts to demonstrate that the Respondents intentionally failed to disclose the underlying sources

[36] *See* 11 CFR. § 104.3(d)(4) (setting forth information required on schedule C-1).

[37] *See e.g.*, Factual & Legal Analysis at 3, MUR 6066 (Hartley-Nagle for Congress, *et al.*) (finding no reason to believe that a candidate violated alleged reporting violations because Complainant did not articulate any factual or legal basis for finding the candidate personally liable).

despite a known legal obligation.[38] Further, it does not appear that the Senator "secretly"[39] took out the loans from Goldman Sachs and Citibank as alleged, given that he disclosed them on his Senate Financial Disclosure Report.

[38] A violation of the Act is knowing and willful when the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). This does not require proving knowledge of the specific statute or regulation the respondent allegedly violated. *See United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not knowledge of the specific statutory provision violated). Rather, it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful." *Id.* (internal quotation marks omitted). This awareness may be shown through circumstantial evidence, such as a "defendant's elaborate scheme for disguising" her actions, or other "facts and circumstances from which the jury reasonably could infer [the defendant] knew her conduct was unauthorized and illegal." *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

[39] MUR 7003 Compl. at 1.